

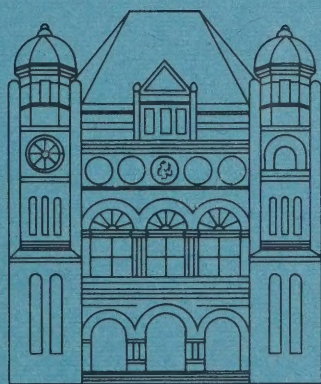
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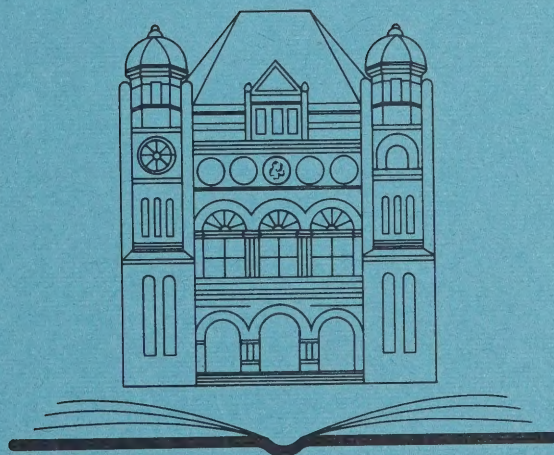
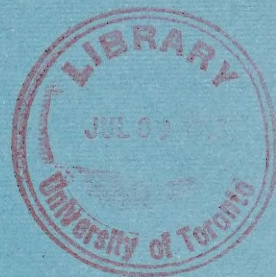


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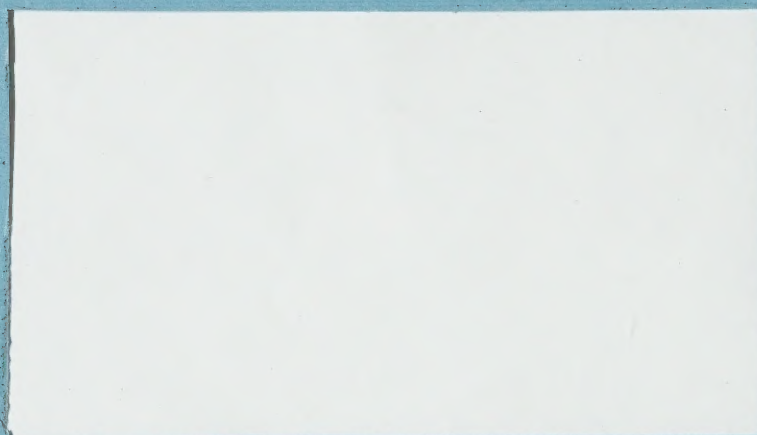
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THE REDISTRIBUTION OF ELECTORAL DISTRICTS IN ONTARIO

Current Issue Paper 24


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INTRODUCTION

The right to vote was recently described by a justice of the Supreme Court of Canada as

the most fundamental of our rights in a democratic society . . . [It] is synonymous with democracy. It is the most basic prerequisite of our form of government.¹

Since 1982 this right to vote has been explicitly guaranteed in the Constitution of Canada, with the requirement that federal and provincial elections be held at least once every five years.² This constitutional guarantee, however, does not address the nature of the electoral system. Unanswered is the process for translating what may be millions of votes into a relatively small number of seats.

This paper focuses upon one aspect of that process — the design of provincial electoral districts in Ontario. Their design is significant as the parliamentary system is based upon particular legislators representing particular geographical constituencies. At a theoretical level, the key questions are: how should the "represented" be organized into constituencies? And who should do the organizing? In other words, who should draw the boundaries? The controversial aspect of these questions is reflected in the accusations of gerrymandering which may accompany the redrawing of constituency boundaries.

The first question above gives rise to the need for criteria (or guiding principles) when redrawing electoral boundaries. What priority has been attached in Ontario to the principle of "one person, one vote" — that is, that districts have basically the same number of constituents? What other factors have been taken into account? In answering these questions, the paper takes a historical perspective and looks at the last three redistributions.*

*With the adoption of the *Charter of Rights*, all redistributions in Canada became subject to the *Charter's* guarantee of the right to vote. Current Issue Paper 141, *The Charter of Rights and the Redistribution of Electoral Districts*, asks: How has that voting guarantee (and others in the *Charter*) affected the criteria for redistribution?

POLITICIZATION OF REDISTRICTING

Need for Criteria

The need for redistribution criteria can best be illustrated by the following example. Suppose, first of all, that there are 1,000,000 people whose interests in a legislature are to be attended to by 100 representatives; suppose, second, that each representative will have 10,000 constituents. If left to random mathematical choice, the number of possible ways of combining the 1,000,000 individual units into 100 lots of 10,000 each is astronomical. Criteria, then, are essential if each group of "represented" is to be organized on some rational basis.³

No matter which criteria for redistricting are adopted, from a political perspective they will be measured against what has been described as "a fairly minimal requirement of a truly representative system."⁴ This requirement holds that there should be a reasonable correspondence between electoral support and representation in the legislature. More specifically, if Party A has more votes than Party B, then it should normally have more seats than Party B.

Gerrymandering

In the 1812 Massachusetts election which gave rise to the term "gerrymander," a majority of the votes did not translate into a majority of the representatives. Although the Federalists won the most votes — 51,766 to 50,164 — the Republican-Democrats achieved a landslide victory in terms of Senate seats — 29 to 11.

A redistricting bill had previously been signed into law by the Governor of Massachusetts, Elbridge Gerry. The bill carefully manipulated district boundaries so as to maximize the election of Republican-Democrats over Federalists. For example, in Essex County, five Senate seats were at stake. Redistricting had concentrated the Federalist vote into a two-member district; this district was partially surrounded by a long strung-out three-member district where Republican-Democrats could expect a

marginal win. As a result of this arrangement, the "Federalist" County of Essex returned only two Federalists out of five Senators.

The three-member Republican-Democratic district caught the attention of Federalist journalists on the *Columbian Centinel*. A cartoonist with the *Centinel* added a few touches to the map to produce a head, wings, claws, and a tail. (See below.) The resulting salamander was called a "gerrymander" in honour of Governor Gerry.⁵



The original gerrymander

Gerrymandering has been defined as the *purposeful* drawing of electoral boundaries for partisan benefit.⁶ The qualification "purposeful" is crucial, for whenever boundaries are drawn, it is likely that advantages will be conferred or will appear to be conferred on one set of candidates. Indeed, one political scientist has contended that "no system of distribution of constituencies is neutral in its effects."⁷

Accordingly, it can be difficult to distinguish between an impartial districting scheme

which by chance favours a particular party and one which is deliberately manipulated to favour that party.

Legislature versus Independent Commission

Opposition charges of gerrymandering are not unexpected whenever under majority government the legislature, as opposed to an independent commission, assumes full responsibility for redistribution.⁸ In *The Election Process in Canada*, Professor Terence Qualter claims that

Redistribution by independent commissions is the first major step in removing both the fact and the appearance of the gerrymander - in a democratic system it is as important to remove the appearance of partisan manipulation of boundaries as it is to abolish the fact of such manipulation.⁹

Qualter cites a number of "rules" which help to explain how legislatures carry out redistribution. Rule one is "Save the incumbents." The overriding goal is to cause as little inconvenience as possible to sitting members, and especially those of the governing party. Another rule is "Cut the retirees." If the number of districts is to be reduced, then as much as possible eliminate the constituencies of members who are going to retire anyway. A third guideline, which is self-explanatory, is "Cut the minority party."¹⁰

In Ontario, the Legislature has not assumed primary responsibility for the drafting of electoral boundaries since 1954.** That year, redistribution was handled by an all-party select committee of the House. Eight years later, the first "independent"¹¹ commission on redistribution was appointed. During the debate on the creation of the commission, Premier John Robarts explained that the new procedure "was designed to remove this whole matter from the field of politics."¹²

**The Legislature still retains some responsibility through the passage of *Representation Acts*.

Two other redistribution commissions have since been appointed. The operations of all three electoral boundaries commissions, as well as recommendations on redistricting by the Select Committee on Election Laws and the Camp Commission (the Ontario Commission on the Legislature), are reviewed below.

THE ONTARIO EXPERIENCE

Special Commission on Redistribution of Electoral Districts in Ontario (1962-1965)

Composition and Mandate

The first Ontario Redistribution Commission was established by an order of the House (and not by statute) in April 1962.¹³ Its members were: The Hon. Mr. Justice E.A. Richardson (Chairman), a member of the High Court of Justice of Ontario; K. Grant Crawford, the director of the Institute of Local Government at Queen's University; and Roderick Lewis, the Chief Election Officer for the Province and the Clerk of the House.

The Commission was given a completely free hand with respect to such fundamental questions as the total number of seats in the Legislature and the extent to which ridings should be of equal population size. Its broad mandate was phrased as follows:

. . . to inquire into the distribution of electoral districts in the Province and to recommend to this House the number, area and boundaries of such electoral districts to be defined in the schedule forming a part of a new *Representation Act* . . .¹⁴

The only constraint on the Commission was that it should give consideration to

- the concentration of population in various areas of the Province as indicated by the 1961 Federal census;
- the varying conditions and requirements regarding representation as between rural and urban electoral districts;
- the existing and traditional boundaries of the electoral districts of the Province;

- the community or diversity of interests of the population of such districts;
- the means of communication between various parts of such districts, together with the physical features thereof;
- all other related and relative factors; and
- with particular reference to rural electoral districts should, as far as practicable, include the whole of any one municipality in one electoral district.¹⁵

Interim Report

Eight months later the Commission tabled an *Interim Report* in the Legislature.¹⁶

The commissioners concluded that a reasonable maximum size for the Legislative Assembly was approximately 120 members. The report continued that the 120 or so constituencies should be classified into three groups (the population figures for each group are listed in brackets): (1) the substantially urban riding (60,000-75,000); (2) the substantially rural riding (25,000-50,000); and (3) the partly urban, partly rural riding (50,000-60,000).

The report then stated that the "most pressing need for a redistribution"¹⁷ lay in the suburbs of Metropolitan Toronto. At the time, the area contained six electoral districts. It was recommended that 10 more seats be added. No recommendations with respect to the rest of the province were made, the Commission recognizing that "our work is far from complete."¹⁸

Following the presentation of the *Interim Report*, *The Representation Amendment Act, 1962-63*¹⁹ was enacted. This Act came into effect in August 1963, upon the dissolution of the 26th Parliament. It created 16 electoral districts in suburban Metropolitan Toronto (an increase of 10 districts), thereby producing a Legislative Assembly of 108 members.

Subsequent Reports

The second report of the Redistribution Commission was tabled in the House in February 1965.²⁰ It dealt with the City of Toronto proper and the balance of the province outside Metropolitan Toronto. The proposals provided for nine more seats — six in southern Ontario, mainly in the urban areas where the greatest population growth had taken place, and three in Northern Ontario. It was pointed out that in the North, the main problem had been one of relocating boundaries to equalize the population of electoral districts.²¹

As far as the relationship between urban and rural seats was concerned, the Commission did not find it necessary to go to either of the extremes laid down in its first report. These extremes would have allowed the population of the largest urban seats to be three times that of the smallest rural seats (75,000 to 25,000). Instead, the populations of the proposed electoral districts ranged from a high of 66,653 to a low of 32,728.²² (These figures still meant that one riding had twice the population of another.)

This report of the Special Commission provoked considerable dissension and discussion in the House. As a consequence, in April 1965 it was referred to the Standing Committee on Privileges and Elections. Later that month, the House adopted the Standing Committee's report on the matter. The Committee had recommended that the Redistribution Commission's report "be referred back to that commission in order that the commission may give consideration to submissions relating to electoral district boundaries made by interested persons or to be made by such persons during such period as the commission may prescribe . . ."²³

In December 1965, the Commission released its *Final Report*.²⁴ On the basis of the extra submissions, a number of boundary adjustments were proposed; however, there was no change in the recommended number of electoral districts. It remained at 117.

Professor Qualter studied the February and December reports and concluded that

A comparison of the two sets of recommendations did not show up any obvious patterns in the changes and there appears to be nothing to indicate that any party gained anything other than accidental or coincidental advantage from the revised report.²⁵

The revised report was accepted by the House and, with only a few minor amendments, was passed into law before the 1967 provincial election.²⁶

Select Committee on Election Laws (*Third Report*, June 1970)

Redistribution procedures were subsequently studied by the all-party Select Committee on Election Laws. In its *Third Report*, the Committee recommended that substantial amendments be made to *The Election Act, 1968-69*, in order to establish a statutory framework for redistribution. These amendments reflected various features found in the relevant Australian, New Zealand, and Canadian law.²⁷

The proposed amendments included the following provisions:

Timing of Redistribution

- Redistribution should be carried out "whenever ordered by the Assembly." Such an order should state the number of electoral districts into which the province is to be divided.²⁸

Commission

- A continuing Redistribution Commission should be appointed by the Lieutenant-Governor in Council. It should consist of three members, one of whom is the Chief Election Officer.

Population Criteria

- The Chief Election Officer should determine the "average population" of the electoral districts by dividing the total population of Ontario by the number of electoral districts into which the province is to be divided.

- The "population quota" for each electoral district must not depart from the "average population" to a greater extent than 25 percent more or 25 percent less. (In a dissenting opinion, the Liberal members of the Committee recommended a 15 percent variation.)

Other Criteria

- In drafting the electoral boundaries, the Redistribution Commissioners should consider (1) community or diversity of interests; (2) means of communication; (3) topographical features; (4) population trends; (5) existing municipal or ward boundaries; and (6) boundaries of federal electoral districts. In its "Commentary," the Select Committee viewed it as "desirable" that federal and provincial electoral districts in Ontario "should be coextensive, to the greatest degree possible."²⁹

Initial Maps

- Before making their report, the Redistribution Commissioners should prepare maps describing the boundaries of each proposed electoral district. These maps should be exhibited in public places and might be printed in newspapers of general circulation. Public attention should be drawn to the maps through publication of a notice in *The Ontario Gazette*.

Report

- After considering all objections and suggestions, the Commission should complete its report and have it laid before the Assembly. If within the next 30 days, at least 10 Members of the Assembly file an objection to the report, a debate should be held. The report, together with a copy of the objection and the relevant Debates, should then be referred back to the Commission for reconsideration. A copy of the report "with or without amendment,"³⁰ should be returned by the Commission to the Speaker.

Once the report has been returned, or if Members do not file an objection as described above, the Commissioners should prepare a draft *Representation Act*. The draft bill should be transmitted by the Speaker to the appropriate Ministry for introduction into the Assembly.

Although these recommendations did not find their way into *The Election Act*, the next redistribution did follow some of the Committee's proposals. (See below.)

Ontario Electoral Boundaries Commission (1973-1975)*Composition and Mandate*

The Ontario Electoral Boundaries Commission was created by an order of the House in December 1973.³¹ Unlike the order establishing the previous Commission, this order did not name the members of the Commission. It simply stated that "a Commission of three shall be appointed by the Lieutenant Governor in Council."³² Subsequently appointed to the Commission were: The Hon. Mr. Justice Campbell Grant (Chairman), a member of the High Court of Justice of Ontario; Roderick Lewis, (Deputy Chairman), the Chief Election Officer for the Province and the Clerk of the Legislative Assembly; and Professor T. Robert Sansom, an Associate Professor of Political Science at the University of Western Ontario.

As recommended by the Select Committee, the order specified, albeit within a range, "the number of electoral districts into which the province is to be divided."³³ The total number of districts could not exceed 125, nor be less than 117. At least 15 of these districts had to be located in Northern Ontario, defined as "that part of Ontario lying North and West of the Southern Boundaries of the present Electoral Districts of Algoma-Manitoulin, Sudbury East and Nipissing."³⁴ According to political scientist Rand Dyck, the special consideration given the North was "a concrete recognition of the problem of representing ridings of great size but limited population."³⁵

Under the order, the "population quota" for each riding had to be based on the "average population." The latter figure was calculated by dividing the total population of Ontario by the proposed total number of electoral districts. The population of a riding could not depart from this "average population" figure to a greater extent than 25 percent more or less. However, if in the opinion of the Commission, any of eight prescribed circumstances (discussed later) "exist to such an extent that require a greater departure . . . the Commission may depart from the average population to such greater extent as it considers necessary or desirable."³⁶

The inclusion of the above formula echoed the Select Committee's concern about the principle of representation by population. The former Commission had received no instructions at all about equalizing the population of ridings.

The Legislature required the new Commission to take into account eight factors. As discussed in the previous section of this paper, the Select Committee had proposed six factors and all but one — the boundaries of federal ridings — were adopted by the Legislature in its order. The other three factors which the Commission had to consider were

- the varying conditions and requirements regarding representation as between urban and rural electoral districts;
- the existing and traditional boundaries of electoral districts; and
- special geographic considerations, including in particular the sparsity, density or relative rate of growth of population in the various regions of the Province, the accessibility of such regions or the size or shape thereof.³⁷

The Assembly then stipulated that the Commission had to invite public attention to a map of the proposed boundaries by publishing a notice in *The Ontario Gazette* which would provide for the lodging of objections. The Commission also had the option of publishing the map in newspapers. These steps, aimed at increasing public participation, were not present in the terms of reference of the 1962-65 Commission.

Once the report was drafted, it would be tabled in the Assembly. What happened next closely resembled the Select Committee's recommendations. If, within the following 15 days, at least 10 members of the Assembly filed an objection, the report had to be debated in the House; a copy of the Debates and the objection would then be forwarded to the Commission. After reconsideration of the report, a final version "with or without amendment"³⁸ would be returned to the Speaker. At this stage, the Commission had to prepare a draft *Representation Act* for transmittal by the Speaker to the appropriate Minister.

The mandate of the previous Commission did not include any reference to the filing of an objection by Members, the holding of debates in the House, and the reconsideration of the report. It merely required the Commission to make recommendations to the House, "to be defined in the schedule forming a part of a new *Representation Act*."³⁹

First Proposals

The Electoral Boundaries Commission published its "First Proposals" in *The Ontario Gazette* in June 1974. In total, 123 seats were proposed for the province. The notice in the *Gazette* stated that the Commission operated with "several broad principles in mind." These principles were described as follows:

First: It was to leave untouched as many of the electoral districts as could possibly be so left, even if this meant that in some cases an electoral district might be perhaps larger or smaller than others of a similar nature.

Second: The Commission was desirous of giving effect to the various factors specified in its Terms of Reference such as geographical, historical and communications considerations, as far as its knowledge enabled it to do so. The factor of extraordinarily rapid growth was also considered where this was apparent to the Commission.

Third: Vacation areas, where the summer population is many times that of the census population, were given special consideration.

Fourth: So far as Northern Ontario is concerned, by the Terms of Reference the 25% tolerance did not apply.⁴⁰

In the 1980 edition of *The Government and Politics of Ontario*, Rand Dyck wrote that there was much to criticize in the Commission's work. The Commission, he argued, had overused the "loophole" permitting it to diverge from the 25 percent rule; it should have placed more emphasis on achieving equally-sized constituencies.⁴¹ (On the basis of the 1971 census, seven of the proposed ridings in southern Ontario fell more than 25 percent below the average population of ridings in that part of

Ontario.)⁴² Dyck noted that the first principle listed by the Commission in *The Ontario Gazette* explicitly gave priority to the objective of leaving untouched as many districts as possible, and not the principle of "one person, one vote."

On the other hand, the Commission's terms of reference did not require a rigid adherence to the principle of representation by population. A 25 percent tolerance was permitted, and it could be exceeded when "necessary or desirable." Roderick Lewis, the Commission's Deputy Chairman, said that the first principle simply meant that the Commission would "not make changes for changes' sake." He added that, in practice, the 25 percent tolerance was "not very often exceeded."⁴³

Subsequent Reports

The notice in the *Gazette* had invited submissions from interested parties. In its next report of November 1974, the Commission recognized that the resulting submissions contained information on "community of interest and other factors" of which it "had been previously unaware."⁴⁴ It was further pointed out that, as a result of the submissions, changes had been made to the initial proposals.

This second report recommended the division of Ontario into 125 ridings, two more than was originally proposed. The two additional seats were located in the Niagara and Waterloo regions. The report was debated in the Legislature in January 1975 and was followed by a third report in March 1975. In accordance with the order establishing the Commission, the latter report contained a draft *Representation Act*. The Commission explained that the Schedule to the draft Act incorporated "such changes [to the electoral boundaries] as were prompted by a careful study of the reports of the [January] debates"⁴⁵

In March 1975 *The Representation Act, 1975* was introduced in the House; it came into force four-and-a-half months later.⁴⁶ One hundred and twenty-five seats were created.

**Ontario Commission on the Legislature
(*Fifth Report*, October 1975)**

In October 1975, the Ontario Commission on the Legislature (the Camp Commission) concluded that "a more effective legislature requires substantially more Members."⁴⁷ Accordingly, it recommended a Legislature of 180 members. The Commission elaborated:

Aside from what more Members of the Legislature would mean in potential for more intimate identification with and representation of voters' interests, as individuals or in groups, simply by giving each legislator a smaller territory and fewer people as a responsibility, we think an increase - say to 180 MPPs - would likely produce more effective caucuses, better manning, and more informed MPPs in legislative committees. It would also draw a much larger complement of talent into the whole institution.⁴⁸

With regards to the objectives of "more effective caucuses" and "better manning," the Commission felt that there was no doubt that more seats "would either give the Premier more choices for an abler Ministry and better parliamentary assistants, or the Opposition a better chance to fulfil its basic functions, or hopefully both."⁴⁹ As for having "more informed MPPs in legislative committees," the Commission observed that

The trend everywhere [Canada, United States, United Kingdom] has been to devolve much legislative, investigative, and scrutinizing work once done in the full House or Chamber to committees. This has invariably required the development of many committees, not just a few, because of the diversity of government operations and the specialization of interests.

. . . The Opposition parties in particular, but also the Government Caucus, are often strained to find the men and women to do long, intensive committee work.⁵⁰

In further support of its recommendation, the Commission saw it as "given" that in the future there would be more, not less, intensive partisan work required of Members, especially in their ridings. It was also a "given" that constituency caseloads were steadily escalating.

The Commission's proposal did not receive the endorsement of the House. Indeed, almost eight years later (June 1983), the Legislature decided that the next redistribution would produce a maximum of 130 seats, well below the proposed figure of 180.

Ontario Electoral Boundaries Commission (1983-1986)

Composition and Mandate

A third redistribution commission was created by an order of the House in June 1983.⁵¹ Subsequently appointed to the Commission by the Lieutenant Governor in Council were: the Hon. Mr. Justice Samuel H. S. Hughes (Chairman), a member of the High Court of Justice of Ontario; Warren R. Bailie, the Chief Election Officer of Ontario; and Professor J. Neville Thompson, an Associate Professor of History at the University of Western Ontario. The practice of appointing a judge, the Chief Election Officer, and an academic was thereby confirmed.

The June order specified that the province had to be divided into at least 125, and not more than 130, ridings. It guaranteed Northern Ontario a minimum of 15 seats.

By way of background, the Honourable Tom Wells, the Minister of Intergovernmental Affairs, informed the House that in 1971 the average population by seat in what was called southern Ontario (the 15 northern seats were excluded) was 62,969; in 1976, the average was 67,982; and in 1981, it was 70,660. If five seats were added in southern Ontario, the average would drop to 67,587, which would approximate the figure for 1976.⁵²

The terms of reference of the Commission were very similar to those of the previous Commission. There was the same 25 percent tolerance and the same discretion to exceed it to the extent considered "necessary or desirable." The eight criteria, ranging from community or diversity of interests to special geographic considerations which the Commission had to take into account when drawing the boundaries, were identical to those prescribed in 1973.

Once a report had been drafted, it would be laid before the Assembly. Similar to the 1973 terms of reference, if at least 10 Members filed an objection, a debate would be held, and the report would be referred back to the Commission. After considering the objections, the Commission had to return the report to the Speaker "with or without amendment."⁵³ Where no objection had been filed, or the report had been returned, the Commission would prepare a draft *Representation Act*. The draft bill and a map of each electoral district would then be transmitted to the appropriate minister by the Speaker.

Notwithstanding the above-described similarities, there was one substantial difference between the procedures of this Commission and those of its predecessor. The December 1973 order of the House required the Commission to invite written, but not oral, submissions after proposing electoral boundaries. Furthermore, it did not make mandatory the publication of maps of the proposed districts in newspapers in the areas affected. The June 1983 order, on the other hand, called for public hearings. In addition, the Commission had to publish maps in newspapers. These new procedures were authorized as follows:

That, the Commission, before reporting, shall prepare a map with a description of the boundaries of each proposed Electoral District or group of Electoral Districts, and shall invite public attention to the map by publishing a notice in *THE ONTARIO GAZETTE*, and shall publish the map or parts thereof in newspapers having general circulation in the proposed Electoral Districts; the notice in *THE ONTARIO GAZETTE* and the newspapers shall provide for times and places of public sittings by the Commission and shall also provide for the lodging of objections and representations in

writing with the Commission before such date as the notice shall provide.

That, the Commission shall hold public sittings for the hearing of representations by those interested parties who have lodged with the Commission written representations and objections in regard to the proposed Electoral Districts and the Commission shall then review its initial proposals in the light of representations received and may make such changes as the Commission deems appropriate.⁵⁴

Initial Proposals and Public Sitings

In February 1984 the Commission published a notice in *The Ontario Gazette* in which it proposed a total of 130 electoral districts.⁵⁵ In accordance with the terms of reference, maps of these districts were subsequently published in newspapers.

In April and May 1984, public hearings were held in Windsor, London, Kitchener, St. Catharines, Hamilton, Barrie, Peterborough, Kingston, Ottawa, Toronto, Sudbury, and Thunder Bay. In total, 577 individual or group submissions were received.

Alan Stewart, the Commission's Secretary, has analyzed the 260 oral representations which were made. Approximately three-quarters of the representations would have resulted in *greater population inequality* among districts. He concluded:

The analysis [which included federal redistribution hearings in Ontario in 1986] indicates that, at least in the minds of members of the public who attend hearings, present redistricting procedures do not unduly impinge on the principle of population equality. Indeed the supply of "population equality" offered by commissioners vastly exceeds the demand.⁵⁶

Mr. Stewart also studied the transcripts of the hearings to gain some insight into what "indicia" of community of interest were most important to the electorate. Thirty-one indicia were identified, and it was felt that their "frequency of mention" in submissions to the Commission might illustrate their relative importance in a general

sense. The most frequently cited factors in descending order were existing electoral district boundaries; county/regional boundaries; local municipal/ward boundaries; transportation patterns; and historical ties.⁵⁷

As a result of the public submissions, the Commission revised its initial proposals. These revisions appeared in the Commission's report of November 1984, which was submitted to the Speaker.⁵⁸

Report of November 1984

In this report, the Commission still proposed the creation of 130 electoral districts. An "electoral quota" of 66,347, the average number of persons for each district, had been calculated by dividing the total population of the province - 8,625,107 - by 130. Thus, for the purposes of computing an average figure, the northern electoral districts had been treated on the same basis as those of southern Ontario. The permitted tolerance of 25 percent above and below the average figure became 82,934 and 49,760, respectively.

The Commission commented:

. . . it must be borne in mind that the average population of the northern electoral districts which the legislature decided should not be less than 15 is, according to the 1981 figures, 51,267. The boundaries of these 15 districts were largely undisturbed in view of their size and disparate populations. By contrast, the southern average is 68,267 and although, owing to the terms of reference contained in the Legislative Assembly's resolution, this figure should not be utilized in establishing the upper and lower population tolerances for southern districts, it was highly relevant when establishing appropriate figures for them.⁵⁹

Altogether, 39 Members filed objections to the November 1984 report. The debate in the House began in July 1985 and continued later that year in October and December. It concluded in January 1986.⁶⁰

Supplementary Report

In March 1986, a supplementary report was returned by the Commission to the Speaker. Changes in boundary or name or both were proposed to 28 of the 130 districts proposed in the previous report.⁶¹

The Commission had compared each Member's submission with the representations made at the public sittings in April and May 1984. Considerable weight was attached to the arguments raised at the public hearings. The Commission elaborated:

The public sittings provided the one opportunity for all concerned parties to appear in a common forum, to present all relevant arguments and elaborate upon them in response to questions by the commissioners and often, to respond to arguments made by other representatives. Some of the changes recommended in the objections and debates in the Assembly can however be accommodated because they relate to new problems caused by changes made after the public sittings or because they relate to problems not raised at all in the representations at those sittings.⁶²

Emphasis was placed on the following considerations:

- Assumptions were made about individuals and organizations which did not appear before the Commission. They were assumed to have approved of the proposals of February 1984 or "at least not to have considered them objectionable."⁶³
- The order creating the Commission did not provide for further advertising and additional public sittings. Under these circumstances, "to make radical changes in the proposed boundaries . . . would deprive the public of the opportunity to make representations arising from alterations made subsequent to public sittings and of course to the Commission's report of November 1984."⁶⁴

Redistribution in rural areas was the subject of special comment. It was noted that several Members had objected to the decrease in the number of rural districts that would occur under the Commission's proposals. According to the Commission, the total number of rural districts would be reduced by two: there would be fewer rural

districts in three areas — (1) Essex and Kent counties; (2) Bruce, Grey and Huron counties; and (3) Renfrew County — while one rural district would be added in Wellington and Dufferin counties.

The March 1986 report stated that "the decrease in number of rural districts is caused by the necessary application of the terms of reference established for this Commission."⁶⁵ The last redistribution, based on the 1971 census, had established 125 electoral districts. Between the 1971 and 1981 censuses, the population of Ontario had grown by 12 percent. Yet, the Commission had been authorized to recommend a maximum increase of four percent (five districts) in the total number of districts. "The need for additional representation in areas of population growth thus could not be accommodated simply by allocating five new districts in five areas of population growth, but required the removal of districts in areas no longer entitled to them, as judged by population."⁶⁶

The Commission concluded that

The return of districts to rural areas as recommended by many members' objections is not possible without the simultaneous removal of districts from more densely populated areas. No such areas were pointed out in the objections and speeches as being overrepresented by the Commission's proposals to an extent justifying the removal of a district from them. *Accordingly the Commission cannot recommend the requested return of districts to rural areas.*⁶⁷ [emphasis added]

Rural areas, though, were not the only areas where districts were lost. In Metropolitan Toronto, the ridings of Bellwoods and St. George were eliminated. The Commission had first proposed their removal in February 1984. (A new seat, however - Fort York - was proposed for downtown Toronto.)

Representation Act, 1986

In June 1986 the Honourable Robert Nixon, the Treasurer and Minister of Economics, introduced Bill 77, the *Representation Act, 1986*. During the debate on second reading, Nixon stressed that the bill was identical to the draft Act prepared by the Electoral Boundaries Commission. It was his contention that the House should be very careful about adjusting boundaries which had been proposed by an "impartial" commission. He explained

It should not lie in the hands of individual members to adjust the boundaries in anything other than the most minimal way. Where a name is misleading for a constituency or where a line has been drawn by mistake involving only a handful of electors, then I think the House would have the right and the power to adjust it, but for us to put our judgment against the impartial judgment of the redistribution commission is another matter.⁶⁸

This notion of competing "judgments" was repeated:

I hope the individual members are well aware of any dangers in putting their judgment ahead of the judgment of the commissioners, which is totally nonpolitical, nonpartisan, at arm's length and has all the majesty of the judiciary of Ontario.⁶⁹

Bill 77 was passed one month later, having been amended in only "the most minimal way." Three ridings were renamed: "Simcoe North" became "Simcoe East"; "York-Ontario" was changed to "Durham-York"; and "Willowdale" replaced "Armourdale."⁷⁰

The *Representation Act, 1986* has prescribed the boundaries for the last two provincial elections.⁷¹

Evaluation

The work of the Electoral Boundaries Commission was commended in an article by Donald MacDonald, the Chair of the Commission on Election Finances and a former leader of the Ontario New Democratic Party. Mr. MacDonald was especially pleased by the Commission's attachment to the principle of representation by population. He wrote:

. . . I can unhesitatingly state . . . that the 1986 result is the most satisfactory in Ontario's post-war history. The reason: This commission has implemented the basic principle of representation by population – rep-by-pop – to a greater degree than any of its predecessors.⁷²

Mr. MacDonald drew attention to the "loophole" that allowed the Commission to depart from the 25 percent tolerance. Notwithstanding the existence of this "loophole," the Commission "did not exploit it." Parry Sound (population 44,268) was the only southern riding to exceed the 25 percent tolerance.⁷³

The Commission did receive some criticism; indeed, 39 Members filed formal objections to the report of November 1984. However, when it came time to implementing the Commission's proposals, only three minor amendments were passed by the House.

The Issue of Rural Representation: Private Member's Resolution (November 1992)

As noted throughout this paper, the criteria for redistribution commissions in Ontario have always included the "varying conditions and requirements" regarding representation as between rural and urban ridings. In November 1992 the Legislative Assembly of Ontario passed a private member's resolution which focused on this criterion. Sponsored by Noble Villeneuve, MPP, the resolution stated that the next redistribution commission should consider these varying conditions, circumstances,

and requirements, as well as taking into consideration the increase in the geographic area of rural ridings after the last two redistributions, with the following intention:

. . . [to create] three classifications of constituencies, urban, urban-rural, and rural, so as to limit the geographic area of rural ridings, and to a lesser degree that of urban-rural ridings, as well as the number of organized municipalities which members must represent.⁷⁴

In support of his resolution, Mr. Villeneuve told the House that there was "a need to recognize the very special characteristics of rural ridings: low population densities, many municipalities and of course many rural routes."⁷⁵ Rural Ontario needed representation that was "worthy"; that did not mean the expansion of rural ridings simply to encompass more people.⁷⁶

With regards to the issue of rural representation, the Supreme Court of Canada has said that "it is more difficult to represent rural ridings than urban."⁷⁷ According to the Court, material presented to it in one case suggested (1) that rural ridings were harder to serve because of difficulty in transport and communications and (2) that rural voters made greater demands on their elected members, whether because of the absence of alternative resources available in urban centres or for other reasons. "Thus, the goal of effective representation may justify somewhat lower voter populations in rural areas."⁷⁸

QUESTIONS FOR THE FUTURE

A review of the redistribution process in Ontario raises several questions:

- When should redistribution take place? The custom has developed whereby boundaries are readjusted after Statistics Canada completes each decennial census. If a 10-year period is not appropriate, should the boundaries be changed more or less frequently? The Select Committee on Election Laws answered the question of "when" by simply stating that a redistribution should be made "whenever ordered by the Assembly."⁷⁹

- Should redistribution procedures be established by statute, rather than by an order of the House?
- Should a redistribution commission be established on a permanent basis?
- Who should be appointed to the commission? Although the House has never set any general qualifications, in practice, the three members of a commission have consisted of a Supreme Court judge, the Chief Election Officer of Ontario, and a university professor. In June 1983, opposition Members supported a motion that the Commission should consist of "one person on the recommendation of the leader of each political party represented in the Assembly"⁸⁰ and the Chief Election Officer. A somewhat similar method of appointment had been proposed in a private member's bill sponsored by James Renwick, MPP.⁸¹ Is a commission appointed exclusively by the Lieutenant-Governor in Council "not genuinely independent?"⁸²
- How many electoral districts should be created? How many districts should be located in southern Ontario and how many in Northern Ontario? Should there be a total of 180 seats as recommended by the Camp Commission? Should the number of ridings be based on a formula which looks at the increase in population since the last preceding decennial census? What relationship, if any, should there be between the number and boundaries of provincial ridings and those of federal ridings?
- The Supreme Court of Canada has said that deviations from the "one person — one vote" rule may be justified only on the grounds of practical impossibility or the provision of more effective representation. What specific deviations should be permitted? For instance, what level of tolerance (25%? 15%? some other figure?) should be set? Should there be exceptions to this level and, if so, under what circumstances? Which criteria, in addition to population figures, should a commission have to consider in order "to ensure that our legislative assemblies effectively represent the diversity of our social mosaic?"⁸³
- Should the special needs of rural areas be more explicitly defined as one criterion? (Terms of reference have simply referred to "varying conditions and requirements" regarding representation as between urban and rural electoral districts.) Should three classifications of constituencies — urban, urban-rural, and rural — be created, as suggested in the private member's resolution that was passed in November 1992? If so, how should they be defined?
- What role, if any, should a system of proportional representation play in the redistribution process?

Before the next redistribution takes place, these questions and others will have to be answered. Those answers will help to shape the future electoral map of Ontario.⁸⁴

FOOTNOTES

¹ *Reference re: Electoral Boundaries Commission Act* (1991), 81 D.L.R. (4th) 16 at 22 (Cory J.).

² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982* (R.S.C. 1985, Appendix II, No. 44), ss. 3-4. There is an exception to the five-year election requirement "in time of real or apprehended war, invasion or insurrection." See s. 4(2).

³ See Terence H. Qualter, *The Election Process in Canada* (Toronto: McGraw-Hill Co. of Canada, 1970), p. 81.

⁴ *Ibid.*, p. 82.

⁵ P.J. Taylor and R.J. Johnston, *Geography of Elections* (Middlesex, England: Penguin Books, 1979), pp 371-373.

⁶ Richard L. Morrill, *Political Redistricting and Geographic Theory* (Washington, D.C.: Association of American Geographers, 1981), p. 11.

⁷ Qualter, p. 81.

⁸ *Ibid.*, p. 115.

⁹ *Ibid.*

¹⁰ *Ibid.*, pp. 98-100. See also Royce Hanson, *The Political Thicket: Reapportionment and Constitutional Democracy* (Englewood Cliffs, N.J.: Prentice-Hall, 1966), p. 35.

¹¹ The word "independent" is used in the sense that MPPs have not sat on the commissions. There has been the allegation that there can be no real "independence" so long as the government party appoints all the members of a commission. See, for instance, Ontario, Legislative Assembly, *Hansard: Official Report of Debates*, 32nd Parliament, 3rd Session (16 June 1983): 1764-1765. (Ross McClellan, MPP, a member of the New Democratic Party)

¹² *Hansard*, 26th Parliament, 3rd Session (18 April 1962): 2529.

¹³ Ontario, Legislative Assembly, *Journals*, 26th Parliament, 3rd Session (18 April 1962): 171.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Ontario, Special Commission on Redistribution of Electoral Districts in Ontario, *First Report* (Toronto: The Commission, 1962). The Commission referred to the *First Report* as an "Interim Report."

¹⁷ Ibid., p. 4.

¹⁸ Ibid., p. 3.

¹⁹ S.O. 1962-63, c. 125.

²⁰ Ontario, Special Commission on Redistribution of Electoral Districts in Ontario, *Report* (Toronto: Queen's Printer, 1965).

²¹ Ibid., p. 4.

²² *Hansard*, 27th Parliament, 3rd Session (3 February 1965): 238.

²³ *Journals*, 27th Parliament, 3rd Session (29 April 1965): 120.

²⁴ Ontario, Special Commission on Redistribution of Electoral Districts in Ontario, *Final Report* (Toronto: Queen's Printer, 1965).

²⁵ Qualter, p. 108.

²⁶ *The Representation Act, 1966*, S.O. 1966, c. 137.

²⁷ Ontario, Legislative Assembly, Select Committee on Election Laws, *Third Report* (Toronto: The Committee, 1970), p. 19. The proposed legislation appeared as Schedule II to the *Report*.

²⁸ Ibid., p. 38 (s. 188).

²⁹ Ibid., p. 11.

³⁰ Ibid., p. 37 (s. 186).

³¹ *Journals*, 29th Parliament, 3rd Session (5 December 1973): 208-209.

³² Ibid., p. 208.

³³ Ontario, Legislative Assembly, Select Committee on Election Laws, *Third Report*, p. 38.

³⁴ *Journals* (5 December 1973): 208.

³⁵ Rand Dyck, "Electoral Reform," in *The Government and Politics of Ontario*, ed. Donald C. MacDonald, 2d ed. (Toronto: Van Nostrand Reinhold, 1980), p. 318.

³⁶ *Journals* (5 December 1973): 208.

³⁷ Ibid.

³⁸ Ibid., p. 209.

³⁹ *Journals* (18 April 1962): 171.

⁴⁰ "First Proposals of the Ontario Electoral Boundaries Commission," *Ontario Gazette* (8 June 1974): 2381.

⁴¹ Dyck, p. 318.

⁴² Jo Surich, "Keeping Them Honest: Election Reform in Ontario," in *The Government and Politics of Ontario*, ed. Donald C. MacDonald (Toronto: Macmillan, 1975), p. 359.

⁴³ Interview with Roderick Lewis, Deputy Chairman of Ontario Electoral Boundaries Commission (also former Chief Election Officer of Ontario and former Clerk of the Legislative Assembly), Toronto, 31 May 1984.

⁴⁴ Ontario Electoral Boundaries Commission, *Report* (Toronto: The Commission, 1974), p. 1.

⁴⁵ Ontario Electoral Boundaries Commission, *Report* (Toronto: The Commission, 1975), p. 1.

⁴⁶ S.O. 1975, c. 13.

⁴⁷ Ontario Commission on the Legislature, *Fifth Report* (Toronto: The Commission, 1975), p. 56. The three members of the Camp Commission were: Dalton Camp (Chairman), a former president of the Progressive Conservative Party of Canada; Farquhar Oliver, a former leader of the Liberal Party of Ontario; and Douglas Fisher, a former Member of Parliament for the New Democratic Party.

⁴⁸ *Ibid.*, p. 54.

⁴⁹ *Ibid.*, pp. 54-55.

⁵⁰ *Ibid.*, p. 55.

⁵¹ *Journals*, 32nd Parliament, 3rd Session (16 June 1983): 97-98. Technically, the Commission was created by resolution.

⁵² *Hansard*, 32nd Parliament, 3rd Session (16 June 1983): 1759.

⁵³ *Journals* (16 June 1983): 98.

⁵⁴ *Ibid.*

⁵⁵ "Notice - Proposed Electoral District Boundaries," *Ontario Gazette* (11 February 1984): 619-642.

⁵⁶ Alan Stewart, "Community of Interest in Redistricting," in David Small, ed. *Drawing the Map: Equality and Efficacy of the Vote in Canadian Electoral Boundary Reform*, prepared for the Royal Commission on Electoral Reform and Party Financing, v. 11 of the Research Studies (Toronto: Dundurn Press, 1991), p. 141.

⁵⁷ See *ibid.*, pp. 151-168.

⁵⁸ Ontario Electoral Boundaries Commission, *Report upon the Redistribution of Ontario into Electoral Districts* (Toronto: The Commission, 1984).

Under the Commission's first proposals, the 115 proposed southern districts contained a population of 7,840,486 making an average per district of 68,178. The revised proposals increased these figures slightly to 7,850,698 and 68,267, respectively.

The 15 proposed northern districts had originally contained a population of 784,621. This total produced an average per district of 52,308. The revisions changed these figures to 774,409 and 51,627, respectively (p. 29).

⁵⁹ Ibid., p. 2. A few days after the report was tabled, the order creating the Commission was amended. Under the original order, Members had to file objections "within a period of fifteen days after the Report is laid before the Assembly." The amendment changed that period to "within the first eight sitting days of the 1985 Session of the Legislative Assembly." *Journals*, 32nd Parliament, 4th Session (30 November 1984): 236.

⁶⁰ The report was debated on the following dates: July 5, October 15, 17, and 25, December 13 and 19, 1985, and January 6, 1986. The participants in the debate included 21 Members who had not filed written objections.

On January 6, 1986, the House authorized the Commission to consider not only the written objections which had been filed and the speeches relating thereto, but all the submissions which had been made by Members during the debates. In its entirety, the resolution read:

That the House consider motions 1 to 36 standing in Orders and Notices and further notices filed with the Clerk of the Assembly relating to the provisions of the Report upon the Redistribution of Ontario into Electoral Districts, such further notices to be published in the notice paper on a day prior to the conclusion of the debate on this resolution, and notwithstanding its previous terms of reference, the commission is hereby authorized to give consideration to all motions so filed and to all submissions reported in Hansard during the discussion of this resolution.

Also in January 1986, the order establishing the Commission was amended to give the Commission 60 days, instead of 30 days, to consider the objections of Members. *Votes and Proceedings*, 33rd Parliament, 1st Session (24 January 1986): 474.

⁶¹ Ontario Electoral Boundaries Commission, *Supplementary Report upon the Redistribution of Electoral Districts in Ontario* (Toronto: The Commission, 1986), p. 1.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ *Hansard*, 33rd Parliament, 2nd Session (7 July 1986): 2193.

⁶⁹ Ibid., p. 2194.

⁷⁰ The amendments were made in Committee of the Whole House on July 8 and 9, 1986.

⁷¹ S.O. 1986, c. 30 (now the *Representation Act*, R.S.O. 1990, c. R.26). Two amendments have renamed electoral districts. See the *Representation Amendment Act, 1990*, S.O. 1990, c. 1 and the *Representation Amendment Act, 1991*, S.O. 1991, c. 2.

⁷² "Rep-by-pop wins out in riding redistribution," *Toronto Star*, 4 May 1986, p. H3. In a similar vein, Jo Surich in "Toward Representative Democracy: Continuing Reforms in the Electoral Process" writes that "the 1980s distribution finally moved Ontario closer to the principle of one person, one vote . . ." (p. 266) Surich's article appears in *Government and Politics of Ontario*, ed. Donald C. MacDonald, 3d ed. (Toronto: Nelson Canada, 1985), pp. 262-274. Surich based his comments on the November 1984 report.

⁷³ The Commission had justified the size of the Parry Sound riding, as follows:

Although PARRY SOUND is south of the line established by the Legislative Assembly to designate the area deserving special treatment, many of the same considerations (extensive size, dispersal of population within the district, remoteness, absence of county or regional organization) that justify this special treatment of northern rural districts also exist in PARRY SOUND, and do not exist in the other areas of southern Ontario that argue for populations below the population floor. The Commission has decided that in this case alone, these considerations require a departure from the 25% tolerance applied in southern Ontario. (*Supplementary Report*, p. 4)

⁷⁴ *Votes and Proceedings*, 35th Parliament, 2nd Session (26 November 1992): 3.

⁷⁵ *Hansard*, 35th Parliament, 2nd Session (26 November 1992): 3511.

⁷⁶ Ibid.

⁷⁷ *Reference re: Electoral Boundaries Commission Act*, (1991) 81 D.L.R. (4th) 16 at 44.

⁷⁸ Ibid.

⁷⁹ Ontario, Legislative Assembly, Select Committee on Election Laws, *Third Report*, p. 38.

⁸⁰ *Journals* (16 June 1983): 95. The motion was sponsored by Ross McClellan, MPP.

⁸¹ Bill 56, *Electoral Boundaries Readjustment Act, 1983*, 3rd Sess., 32nd Leg. Ont. 32 Eliz. II, 1983 (first reading 2 June 1983). Section 2 stated that an electoral boundaries readjustment commission should consist of the Chief Election Officer and "one person on the recommendation of the leader of each political party that is represented in the Assembly by four or more members and that nominated candidates in at least half the electoral districts in the most recent general election." Bill 56 dealt with the redistribution process from the time a commission was established until draft legislation on representation was prepared.

⁸² This was a phrase used by Mr. McClellan in support of his motion of June 16, 1983.

⁸³ *Reference re: Electoral Boundaries Commission Act*, p. 36.

⁸⁴ For a further discussion of the issues raised by redistributions, see John C. Courtney, Peter MacKinnon, and David E. Smith, eds. *Drawing Boundaries: Legislatures, Courts, and Electoral Values* (Saskatoon: Fifth House Publishers, 1992); David Small, ed. *Drawing the Map: Equality and Efficacy of the Vote in Canadian Electoral Boundary Reform*; J. Patrick Boyer, *Election Law in Canada: The Law and Procedure of Federal, Provincial and Territorial Elections*, vol. 1 (Toronto: Butterworths, 1987), pp. 94-100.

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